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SUBJECT: UKRAINE: GOU TELLS A/S WAYNE OF CONTINUED IPR
ENFORCEMENT EFFORTS

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1. (U) SUMMARY: Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne met on January 24 with Acting Minister of Education and Science Borys Zhebrovskiy and other GOU officials involved in intellectual property (IPR) rights protection. A/S Wayne told the officials that, in recognition of improvements in Ukraine's IPR protection regime, USTR had decided to restore GSP benefits and to improve Ukraine's ranking on IPR under the Special 301 provisions of U.S. Trade Law. He encouraged the GOU to enhance enforcement measures and applauded the GOU's agreement to take part in a new "Enforcement Cooperation Group" including representatives of the private sector. The GOU officials reported on recent enforcement efforts -- including 115 new criminal cases based on new optical disc (OD) legislation passed in July -- as well as plans and training needs for the future. The Acting Minister asked that the USG help encourage Ukraine's Foreign Ministry to complete work on extending the bilateral Science and Technology Agreement. END SUMMARY.

2. (U) Present at the 40-minute meeting at the Ministry of Education and Science (MES) were Acting Minister Zhebrovskiy (whose portfolio as First Deputy Minister includes IPR issues), the Ministry's Press Secretary, and head of its international affairs division, as well as Valentyn Chebotariov, Deputy Chairman of the State Department of Intellectual Property (SDIP), which is under the MES's purview, and Serhiy Lebid, Deputy Head of the Economic Crime Department (and head of the IPR Unit within that Department) of the Ministry of Internal Affairs. Accompanying A/S Wayne were officials from the Department of Commerce, EB/IFD/OMA, and Post.

Good News from USTR

3. (SBU) A/S Wayne called attention to the fact that USTR had the day before announced Ambassador Portman's decision following the conclusion of a Special 301 out-of-cycle review (OCR) to restore GSP benefits and to redesignate Ukraine from the Priority Foreign Country category to the Priority Watch List. He gave Zhebrovskiy a copy of the USTR press release on the topic translated into Ukrainian. Congratulating the GOU for passing the OD measure in August, A/S Wayne said the U.S. was pleased the GOU had also agreed to ongoing consultation between government and industry on IPR enforcement. (Ref A reports on the GOU agreement to create the Enforcement Cooperation Group.) A/S Wayne noted that the USTR decision could open new opportunities for Ukraine's exports to the U.S. and would certainly send a signal to companies in the U.S. that the business climate in Ukraine had improved with regard to IPR protection.

4. (SBU) Acting Minister Zhebrovskiy said he was pleased that the GOU's efforts to fulfill all of the obligations of the bilateral IPR Joint Action Plan established in 2002 had brought positive results. He noted that he had been at the Rada (parliament) during the dramatic and contentious session that ended in the passage of the OD amendments (ref B). It was very important for Ukraine's economy and its citizens to have these results at this time. The U.S. move was proof, he said, that the GOU's efforts at democratic reforms paid off. (Note: Zhebrovskiy did not disguise that he was a member of President Yushchenko's Our Ukraine Party, and stopped just short of commenting on the political use that party may make of the U.S. decision.)

SDIP's Plans to Improve IPR Protection

5. (SBU) Chebotariov of the SDIP agreed that this was an important step. He recalled that the GOU had begun its close cooperation with the U.S. in 2001 with the Joint Action Plan. The five intervening years had not been

wasted. "Frankly," he said, "I believe that the U.S. sanctions and other actions were instrumental in bringing change to the government's approach to IPR issues." (Zhebrovskiy joked that this should not be taken to mean that the GOU needed more sanctions.) Chebotariov added that the GOU's legislative base was now sound.

16. (SBU) Chebotariov then described the GOU's priorities in improving IPR enforcement. The GOU would soon take steps to harmonize existing legislation and to coordinate better the work of the various agencies charged with enforcement. There had been progress in the Customs Service, Chebotariov remarked. Although Ukraine's "northern neighbor" sent large amounts of pirated optical discs to Ukraine, the Ministry of Internal Affairs and the SDIP were working together to stem the flow. There were 29 special customs points where IPR-trained officers worked. Chebotariov said the SDIP was able to prevent pirate production of ODs in Ukraine; there was constant monitoring of the OD manufacturing plants. For the SDIP a main priority was now to ensure that copyrights were observed by other users, such as broadcast media, restaurants, bars, and casinos. There had been no achievements yet in this area, but the SDIP had been developing plans.

17. (SBU) Training was another priority for the SDIP, Chebotariov said. There had been problems several years ago when the first IPR cases were brought to courts that were not prepared to hear them. Now there were some experts working with the courts, but more experts were needed. Finally, Chebotariov said the SDIP saw a need for public outreach, so that citizens learned the importance of IPR protection. SDIP inspectors would work with the media to inform the public of the existence of copyright laws and of how to alert authorities of copyright infringements.

Internal Affairs Engaged on Enforcement

18. (SBU) Lebid, head of the Ministry of Internal Affairs' (MIA) IP unit said that the passage of the OD amendments in July 2005 had made a tremendous difference in enforcement. In the two years prior to passage there had been zero criminal cases filed for illegal trading in optical discs. In the three months since enactment there had been 115 cases filed. Over the last year there had been a total of 400 criminal cases filed regarding infringement of copyright and neighboring rights. This, he said, did not indicate that the number of violations was increasing, but that law enforcement was getting better at catching violators.

19. (SBU) Lebid stressed that the GOU was not resting on its laurels. One week earlier, the MIA and MES had persuaded the Rada to pass in the first reading changes to the criminal code stiffening penalties for IPR violations by organized crime groups. This draft law had met with opposition in the Rada, but, he said, the public's approval of the measure had led to passage. Zhebrovskiy interjected that the U.S. press release on Special 301 would help with passage of further measures and asked if the Ministry could publicize the U.S. notice. (Note: The draft, No. 8068, amends the Criminal Code to lower the threshold for criminal liability and strengthen the penalties for violations related to other copyrighted products -- including software, data bases, cassette tapes, etc. -- while the August 2005 amendments had applied only to optical discs.)

10. (SBU) A/S Wayne responded that it was encouraging that the GOU had been able to take swift enforcement action soon after passage of the OD amendments. He said that the enforcement effort was a difficult, never-ending enterprise, even for the U.S. He concurred with the priorities of public education and training. He noted that the U.S. had provided some IPR training in the past and suggested that the discussions in the Enforcement Cooperation Group (ECG) may lead to other such opportunities. He underlined the importance of learning from industry in the ECG, and pointed out that the private sector was able to share experience and best practices from other parts of the world. He suggested that the launching of the ECG (note: anticipated for February) be accompanied by publicity. He told Zhebrovskiy he could publicize the U.S. press release but encouraged the GOU to draft its own version stressing the importance of IPR protection to Ukraine's own creative professions such as scientists, artists, and inventors.

Science and Technology Agreement

11. (SBU) Zhebrovskiy closed the meeting by asking the U.S. side to persuade Ukraine's Foreign Ministry to complete work on extending the bilateral Science and Technology Agreement. He noted that his Ministry had already supplied its comments to the MFA, but that the document seemed to have gotten bogged down bureaucratically.

112. (U) A/S Wayne has cleared this message.
HERBST